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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 AMANDA LEA SEXTON,
8 Plaintiff,

9 v.

10 COUNTY OF CLARK NEVADA, *et al.*,
11 Defendants.
12
13

Case No. 2:16-cv-02289-RFB-VCF

ORDER

Motion to Add Assisting Inmate to
Transaction List (ECF No. 46)
Motion for Order Allowing
Correspondence (ECF No. 47)
Motion to Dismiss (ECF No. 62)
Motion to Dismiss (ECF No. 64)
Motion to Extend Time (ECF No. 70)

14 **I. INTRODUCTION**

15 Before the Court are Plaintiff Amanda Lea Sexton's ("Sexton") three motions: (1) Motion
16 to Add Assisting Inmate to Transaction List, ECF No. 46; (2) Motion for Order Allowing
17 Correspondence Between Plaintiff and Toney White, ECF No. 47; and (3) Motion to Extend Time
18 to Respond to Defendants' Motion to Dismiss, ECF No. 70.

19 Also before the Court are two motions to dismiss. Defendants J. Chavez ("Chavez"), R.
20 Robinson ("Robinson"), Ryan Adams ("Adams"), Anthony Niswonger ("Niswonger"), and City
21 of Henderson Police Department ("HPD") (collectively, "Henderson Defendants") bring a Motion
22 to Dismiss. ECF No. 62. Defendants Las Vegas Metropolitan Police Department ("LVMPD"),
23 Sheriff Joseph Lombardo ("Lombardo"), Officer Franc Cadet ("Cadet"), and Officer Charles
24 Yannis ("Yannis") (collectively, "Las Vegas Defendants") also bring a Motion to Dismiss. ECF
25 No. 64.
26

27 **II. FACTUAL BACKGROUND**

28 In this civil rights matter, Sexton sues several individuals and entities for constitutional and

1 statutory violations occurring during Sexton's arrest and her pretrial detainment. ECF No. 6.¹

2 Prior to her arrest, Sexton was involved in a car accident that left her with chronic pain. Id.
3 at 4. She suffered from head, spine, and neck injuries, dual spine fractures, chronic headaches, and
4 mental health illnesses such as post-traumatic stress disorder ("PTSD"), anxiety, and depression.
5 Id. Sexton was receiving medical treatment for her chronic pain between September 3, 2015, and
6 January 22, 2016. Id. Her head trauma also caused her to develop blurred vision. Id. As a result,
7 Sexton was prescribed prescription glasses. Id. When she attempted to read or write without her
8 glasses, she experienced severe headaches. Id.

9 Sexton was arrested by Clark County of Nevada ("COCN"), City of Henderson, Nevada
10 ("COHN"), City of Henderson Police Department ("HPD"), City of Las Vegas ("CLV"), and Las
11 Vegas Metropolitan Police Department ("LVMPD") on January 22, 2016. Id. at 5. Sexton
12 complied with arresting officers during her arrest. Id. But despite her compliance, Yannis injured
13 Sexton by slamming her against the concrete ground and jumping on top of her. Id. Lombardo was
14 later informed about the force Yannis employed when Sexton requested an investigation, but he
15 failed to reply to her complaint. Id. at 10. After Yannis made the arrest, Sexton was transported to
16 Henderson Detention Center ("HDC"). Id. at 5.

17 During the admission process into HDC, Sexton underwent medical screening by
18 Henderson Detention Center Medical Administration ("HDCMA"). Id. She shared her medical
19 conditions and current prescriptions with HDCMA, including her car accident injuries. Id. at 6.
20 She also provided a list of her known prescriptions, *e.g.* Loratab and Percocet, and included a list
21 of her prescribing pharmacies. Id. As to her current medical conditions, Sexton specifically
22 informed HDCMA about her drug and nicotine withdrawals, PTSD, severe injuries to her head,
23 neck, and back injuries, and chronic pain. Id. at 5. She described her pain as debilitating. Id. She
24 also told HDCMA about her prescription eye glasses and stated that her fractured spine would
25 require her to use a lower bunk while detained. Id.

26 Sexton believes HDCMA prescribes medication to detainees that can be verified as a
27

28 ¹ The Court takes the following facts from Sexton's Amended Complaint (ECF No. 6) for purposes of this motion to dismiss.

1 prescription for a legitimate medical need. Id. at 6. HDCMA refused to prescribe Sexton her
2 medications based on a “no narcotic policy” implemented by COCN, HDCMA, and Moers. Id.

3 During her time at HDC, Sexton never engaged in conduct warranting discipline. Id. But
4 Chavez and Robinson placed Sexton in punitive segregation after the admission process for twelve
5 days at the request of Adams and Niswonger. Id. She was not afforded any notice or opportunity
6 to challenge her punitive segregation. Id. at 7. She remained in punitive segregation until February
7 3, 2016. Id.

8 Five days after Sexton was booked into HDC, Niswonger and Adams interviewed Sexton.
9 Id. Sexton requested her prescription glasses during the interview, explaining that her head trauma
10 caused blurred vision, strained eyes, and excruciating headaches. Id. Niswonger and Adams
11 laughed at Sexton’s request and stated they would help her only if she helped them. Id.

12 Sexton continued to complain about her medical needs while at HDC. Id. HDCMA
13 provided Sexton with only Ibuprofen despite her continual complaints of debilitating pain. Id.

14 Sexton was transferred to Clark County Detention Center (“CCDC”) on February 3, 2016.
15 Id. When being processed into CCDC, she reiterated her need for prescription glasses, pain
16 management, and a lower bunk to Naphcare staff (“Naphcare”). Id. Naphcare issued Ibuprofen to
17 Sexton based on CCDC’s “no narcotic policy.” Id. Naphcare continued to insist on treatments that
18 were known to be ineffective for Sexton. Id. at 8.

19 Although Defendants were aware of Sexton’s medical conditions and injuries, she was
20 assigned to a hard cell. Id. The hard cell contained a concrete slab and hard wood benches. Id. It
21 lacked bedding and a mattress. Id. She was assigned to the hard cell based on a policy approved
22 by, in part, LVMPD and Lombardo. Id. She remained in the cell for three days. Id. The cell
23 conditions exacerbated her head, spine, and neck pain. Id.

24 Based on the hard cell conditions and the inadequate medical treatment, Sexton requested
25 the necessary tools to complete a grievance. Id. at 9. An unknown officer responded “wait until
26 you get upstairs.” Id.

27 Sexton was moved to North Valley Detention Center (“NVDC”) on February 6, 2016. Id.
28 She has been assigned an upper bunk sporadically. Id. At least one Defendant told her that “inmates

1 cannot choose their housing as housing is based on the needs of the facility.” Id. She formally and
2 informally made multiple Defendants, including LVMPD, aware of the risks she faced from an
3 upper-bunk assignment. Id.

4 On May 14, 2016, Cadet confronted Sexton about legal materials filed and submitted for
5 copies for this case. Id. Cadet told Sexton that filing a lawsuit was “just gonna make a bad situation
6 worse.” Id.

7 On September 24, 2016, Sexton was placed in “hole” as punishment for filing this suit. Id.
8 Defendants justified the placement through fabricated or exaggerated charges of rule violations.
9 Id. Defendants continue to engage in a harassment campaign to discourage Sexton from continuing
10 this action. Id.

11 Throughout her time in custody, Sexton has filed multiple grievances. Id. at 11. Many have
12 gone unanswered or have been destroyed. Id. She continues to experience pain because she has
13 not been treated for pain management or given her prescriptions. Id. The lack of treatment stems
14 from the policies and practices adopted or ratified by COCN, COHN, HPD, Lombardo, Moers,
15 Williamson, HDCMA, Cadet, Naphcare, CLV, and LVMD. Id. at 12–14. Sexton believes the
16 policies serve no purpose. Id. at 13–14.

17 18 **III. PROCEDURAL BACKGROUND**

19 Sexton originally asserted in her claims together with those of Toney White (“White”).
20 White v. Clark County of Nevada et al., 2:16-cv-00734-RFB-VCF (D. Nev. filed April 1, 2016).
21 On September 29, 2016, the Court severed the claims. Id. at ECF No. 31. Sexton then filed her
22 Amended Complaint against Defendants in November 2016, in which she alleges claims under 42
23 U.S.C. § 1983 (“Section 1983”), the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101,
24 *et seq.*, and the Rehabilitation Act (“RA”), 29 U.S.C. § 794. ECF No. 6. After the Amended
25 Complaint was screened, the following claims remained:²

26 (1) violation of the First Amendment for retaliation against Cadet;

27
28 ² Certain claims also remained against other Defendants who are not part of Henderson
Defendants or Las Vegas Defendants subsets, *e.g.* Defendants Naphcare, Williamson, HDCMA,
COCN, COH, Moers, CLV, HDCMA, Gregg, and Ashley. *See* ECF No. 43.

- 1 (2) violation of the First Amendment for inmate mail claim against Lombardo;
2 (3) violation of the Fourteenth Amendment Due Process Clause for placing Sexton in
3 punitive segregation without notice or an opportunity to challenge the placement
4 against Chavez, Robinson, Adams, and Niswonger;
5 (4) violation of the Due Process Clause for deliberate indifference to a serious medical
6 need against Adams, Niswonger, HPD, Lombardo, and LVMPD;³
7 (5) violation of the Fourteenth Amendment Due Process Clause for a policy allowing
8 injured inmates to be placed in a hard cell against LVMPD and Lombardo;
9 (6) violation of the Fourth Amendment for the use of excessive force during the arrest
10 against Yannis, LVMPD, and Lombardo; and,
11 (7) violation of the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act
12 (“RA”) against Lombardo, LVMPD, and HPD.

13 ECF No. 43.

14 Five pending motions have been brought since the screening of the Amended Complaint.
15 Sexton moves to add assisting inmate to the transaction list and for an order allowing
16 correspondence with White. ECF Nos. 46, 47. Henderson Defendants and Las Vegas Defendants
17 move separately to dismiss the complaint. ECF Nos. 62, 64. Sexton initially filed a notice of non-
18 opposition to Henderson Defendants’ motion to dismiss. ECF No. 68. But she later moved for an
19 extension of time to respond to the motion. ECF No. 70. She then opposed the motion. ECF No.
20 86. She also opposed Las Vegas Defendants’ motion. ECF No. 85. Both sets of Defendants replied.
21 ECF Nos. 88, 89. The matter was then stayed pending a decision on the motions to dismiss. ECF
22 No. 98.

23 24 **IV. LEGAL STANDARD**

25 In order to state a claim upon which relief can be granted, a pleading must contain “a short
26 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.

27
28 ³ Because the alleged conduct occurred while Sexton was a pretrial detainee, her medical
claims are analyzed under the Fourteenth Amendment Due Process Clause. Gordon v. Cty. of
Orange, 888 F.3d 1118, 1125 (9th Cir. 2018).

1 8(a)(2).

2 In ruling on a motion to dismiss for failure to state a claim, “[a]ll well-pleaded allegations
3 of material fact in the complaint are accepted as true and are construed in the light most favorable
4 to the non-moving party.” Faulkner v. ADT Security Servs., Inc., 706 F.3d 1017, 1019 (9th Cir.
5 2013).

6 To survive a motion to dismiss, a complaint must contain “sufficient factual matter,
7 accepted as true, to state a claim to relief that is plausible on its face,” meaning that the court can
8 reasonably infer “that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556
9 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

10 In addition, documents filed by a plaintiff who is proceeding without counsel must be
11 liberally construed, and a *pro se* complaint must be “held to less stringent standards than formal
12 pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89 (2007) (quoting Estelle v. Gamble,
13 429 U.S. 97, 106 (1976)) (citations and internal quotation marks omitted); see also Butler v. Long,
14 752 F.3d 1177, 1180 (9th Cir. 2014).

15 16 **V. DISCUSSION**

17 The Court first resolves Sexton’s three pending motions. It then turns to the two motions
18 to dismiss.

19 **A. Sexton’s Motions**

20 To begin, the Court grants *nunc pro tunc* Sexton’s request for an extension of time to
21 respond to Henderson Defendants’ motion to dismiss. Sexton sought an extension based on her
22 unfamiliarity with the law as a *pro se* defendant. Defendants did not oppose the motion. The Court
23 will therefore consider her opposition when resolving the motion to dismiss.

24 As to Sexton’s remaining two motions, Sexton moves to add the assisting inmate to the
25 transaction list and for an order allowing correspondence with White. The Court finds no basis in
26 the law to grant the relief sought and denies the motions accordingly.

27 **B. Defendants’ Motions to Dismiss**

28 The Court now turns to Defendants’ motions to dismiss. The Court first addresses whether

1 HPD may be sued under Nevada law. The Court then discusses whether all claims against
2 Henderson Defendants must be dismissed for insufficiently alleging punitive purpose or intent.
3 The Court then resolves each set of Defendants' arguments as they pertain to individual claims.

4 **1. Capacity of HPD**

5 The Court first considers Henderson Defendants' argument that HDP lacks the capacity to
6 be sued under FRCP 17(b).

7 *i. Legal Standard*

8 FRCP 17(b) provides that for parties other than individuals or corporations, the capacity to
9 sue or be sued is determined by state law. Fed. R. Civ. P. 17(b)(3). The Nevada Supreme Court
10 has held that "a department of the municipal government may not, in the department name, sue or
11 be sued" without statutory authorization. Wayment v. Holmes, 112 Nev. 232, 237–38, 912 P.2d
12 816, 819 (1996) (dismissing Washoe County District Attorney's Office, holding it was a
13 department of the municipal government rather than a political subdivision).

14 *ii. Discussion*

15 HPD is not a proper party under Nevada law. COHN is instead the proper party to sue when
16 challenging HPD conduct. Because Sexton names both HPD and COHN as Defendants, the Court
17 construes her claims against HPD as claims against COHN. The Court dismisses HPD from this
18 matter accordingly.

19 **2. Punitive Intent of Henderson Defendants**

20 In addition to summarily dismissing HDP, Henderson Defendants argue for the summarily
21 dismissal of the remaining Henderson Defendants.

22 *i. Legal Standard*

23 A pretrial detainee's right to be free from punishment is grounded in the Due Process
24 Clause, but courts borrow from Eighth Amendment jurisprudence when analyzing the rights of
25 pretrial detainees. See Pierce v. Cnty. of Orange, 526 F.3d 1190, 1205 (9th Cir. 2008). The Ninth
26 Circuit has held that a pretrial detainee may not be subjected to disciplinary segregation without a
27 due process hearing. Mitchell v. Dupnik, 75 F.3d 517, 524 (9th Cir. 1996).

28 *ii. Discussion*

1 Henderson Defendants move to be dismissed from this matter, arguing Sexton failed to
2 allege they acted with the punitive purpose or intent necessary to her pretrial detainee claims. The
3 Court disagrees. Sexton alleges that Chavez and Robinson placed her into punitive segregation at
4 the request of Adams and Niswonger even though she had not engage in any conduct meriting
5 discipline. She further alleges that she never received notice of any misconduct or an opportunity
6 to challenge the punitive segregation. Because Sexton was allegedly placed in a disciplinary
7 segregation without due process as a pretrial detainee, the Court finds she sufficiently alleges that
8 Henderson Defendants acted with punitive purpose or intent.

9 3. Section 1983 Claims

10 The Court now turns to Sexton's claims asserted under Section 1983. For a plaintiff to
11 assert a violation Section 1983 by state actors, she must establish an underlying constitutional
12 violation. "Section 1983 does not create substantive rights but merely is a device for enforcing
13 certain constitutional provisions or federal statutes." See Chapman v. Houston Welfare Rights
14 Org., 441 U.S. 600, 617 (1979). The elements of a Section 1983 claim are: (1) violation of rights
15 protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct
16 of a "person" (4) acting "under color of state law." Crumpton v. Gates, 947 F.2d 1418, 1420 (9th
17 Cir. 1991).

18 Local governments can be held liable under Section 1983 for deprivations of federal rights
19 only if the violation is caused by action taken pursuant to official municipal policy or custom;
20 municipalities may not be held liable under a theory of *respondeat superior*. Monell v. New York
21 City Dept. of Social Servs., 436 U.S. 658, 690 (1978). There are four ways to establish municipal
22 liability: 1) official decision by policymaking body (Monell); 2) action by one with final
23 policymaking authority (Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986)); 3) failure to
24 train (City of Canton v. Harris, 489 U.S. 378, 388 (1989); and 4) custom (Gillette v. Delmore, 979
25 F.2d 1342, 1348 (9th Cir. 1992)). "When an individual sues a local government for violation of a
26 constitutional right, the municipality is liable if the individual can establish that the local
27 government 'had a deliberate policy, custom, or practice that was the 'moving force' behind the
28 constitutional violation he suffered.'" Galen v. County of L.A., 477 F.3d 652, 667 (9th Cir.2007)

1 (quoting Monell, 436 U.S. at 694–95). To allege municipal liability under Monell, a plaintiff must
2 provide more than a bare allegation that a policy exists. AE ex rel. Hernandez v. Cty. of Tulare,
3 666 F.3d 631, 637 (9th Cir. 2012).

4 ***i. Claim One: First Amendment Retaliation and Inmate Mail***

5 Claim One pertains only to Las Vegas Defendants. In Claim One, Sexton alleges a First
6 Amendment retaliation claim against Cadet and an inmate mail claim against Lombardo.

7 ***a. Retaliation Claim - Legal Standard***

8 Sexton first alleges a First Amendment retaliation claim against Cadet. To assert a
9 retaliation, claim under the First Amendment in the prison context, a plaintiff must allege five
10 elements: “(1) an assertion that a state actor took some adverse action against an inmate,
11 (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled
12 the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance
13 a legitimate correctional goal.” Shepard v. Quillen, 840 F.3d 686, 695 (9th Cir. 2016).

14 ***b. Retaliation Claim - Discussion***

15 Sexton alleges Cadet retaliated against her for pursuing this matter, stating she was “just
16 gonna make a bad situation worse.” Sexton was then harassed and placed in the “hole” four months
17 later. Las Vegas Defendants move to dismiss the retaliation claim based the lack of temporal
18 proximity between Sexton’s complaint, Cadet’s comment, and the alleged retaliation. While
19 temporal proximity may be considered in resolving a First Amendment retaliation claim, Pratt v.
20 Rowland, 65 F.3d 802, 807 (9th Cir. 1995), the Court accepts Sexton’s well-pleaded allegations
21 as true at the motion to dismiss stage. Because Sexton alleges that Cadet harassed her and placed
22 her in the “hole” for pursuing this litigation, the Court denies Las Vegas Defendants’ motion to
23 dismiss as to the First Amendment retaliation claim.

24 ***c. Inmate Mail Claim - Legal Standard***

25 Sexton next brings an inmate mail claim against Lombardo. Generally, prisoners have a
26 First Amendment right to send and receive mail. Witherow v. Paff, 52 F.3d 264 (9th Cir. 1995).
27 But “a prison may adopt regulations which impinge on an inmate’s constitutional rights if those
28 regulations are ‘reasonably related to legitimate penological interests.’” Id. (quoting Turner v.

1 Safley, 482 U.S. 78, 89 (1987)). “Legitimate penological interests include security, order, and
2 rehabilitation.” Id.; see also Turner, 482 U.S. at 93 (holding limitation on inmate-to-inmate
3 correspondence was reasonably related to the valid goals of institutional security and safety).

4 ***d. Inmate Mail Claim - Discussion***

5 Sexton challenges an alleged policy that prohibits mail inmate-to-inmate correspondence.
6 Las Vegas Defendants argue the alleged policy is constitutional because it is reasonably related to
7 legitimate penological interests of preventing criminal activity and promoting safety. Because the
8 alleged policy reasonably relates to legitimate penological interests identified in Turner, the Court
9 dismisses Sexton’s mail claim accordingly.

10 ***ii. Claim Two: Punitive Segregation in Violation of Due Process***

11 Turning to Claim Two, which only concerns Henderson Defendants, Sexton alleges she
12 was placed in punitive segregation without due process in violation of the Fourteenth Amendment.

13 ***a. Legal Standard***

14 A pretrial detainee's right to be free from punishment is grounded in the Due Process
15 Clause. See Pierce, 526 F.3d at 1205. A pretrial detainee may not be subjected to disciplinary
16 segregation without a due process hearing. Mitchell, 75 F.3d at 524.

17 ***b. Discussion***

18 Henderson Defendants argue for dismissal of Claim Two on three bases. First, they argue
19 that the claim is conclusory in nature. But as held *supra*, the Court finds Sexton adequately alleged
20 that Henderson Defendants placed Sexton in punitive segregation in violation of due process.

21 Second, Henderson Defendants argue the segregation could not be punitive since Sexton
22 concedes she did not engage in any conduct warranting discipline. This argument is circular and
23 specious. Plaintiff is essentially alleging that she was punished without cause; by definition, she
24 would not have engaged in conduct that created a basis for her punitive segregation. The Court
25 therefore rejects this argument.

26 Third, Henderson Defendants argue Sexton’s segregation was reasonably related to a
27 legitimate governmental objective: managing HDC resources and maintaining its security. But
28 Sexton alleges a punitive purpose for her confinement. At this stage, the Court must liberally

1 construe Sexton's *pro se* Amended Complaint and accept her well-pleaded allegations as true. The
2 Court therefore denies Henderson Defendants' motion as to Claim Two.

3 ***iii. Claim Three: Inadequate Medical Care***

4 In Claim Three and Claim Four, Sexton alleges Henderson Defendants and Las Vegas
5 Defendants failed to provide adequate medical care in violation of due process.

6 ***a. Legal Standard***

7 A pretrial detainee's claims regarding inadequate medical care fall under the Fourteenth
8 Amendment's Due Process Clause, which imposes an objective deliberate indifference standard.
9 Gordon, 888 F.3d at 1125. Such a claim requires four elements: "(i) the defendant made an
10 intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those
11 conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not
12 take reasonable available measures to abate that risk, even though a reasonable official in the
13 circumstances would have appreciated the high degree of risk involved—making the consequences
14 of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the
15 plaintiff's injuries." Id. The third element requires the court to consider if the defendant's conduct
16 is "objectively unreasonable." Id. The inquiry is case specific, turning on the particularities of the
17 facts and circumstances in a case. Id. A plaintiff must "prove more than negligence but less than
18 subjective intent—something akin to reckless disregard." Id.

19 In Claim Three, Sexton alleges Henderson Defendants and Las Vegas Defendants (1)
20 refused to provide her with adequate pain medication or medical treatment, (2) denied her
21 treatment for her drug and nicotine withdrawals, (3) withheld her prescription glasses. Both sets
22 of Defendants move to dismiss the claim.

23 ***b. Henderson Defendants - Discussion***

24 Henderson Defendants move to dismiss Claim Three, arguing the restriction of certain
25 medications serves the legitimate government objective of maintaining safety in the detention
26 center. 1063 (9th Cir. 2014). Henderson Defendants also argue that Adams and Niswonger cannot
27 be held liable for the alleged conduct because Sexton did not allege that either Defendant has
28 medical responsibilities in their positions. Finally, Henderson Defendants argue for the dismissal

1 of Claim Three because Sexton did not allege that she experienced further injury from Henderson
2 Defendants' conduct and the use of non-narcotic pain does not justify an inadequate medical care
3 claim.

4 The Court finds that Sexton has sufficiently alleged a claim for inadequate medical care
5 under the Fourteenth Amendment as a pretrial detainee. First, she alleges defendants made
6 intentional decisions to withhold her prescription pain medications and prescription glasses as well
7 as denying her treatment for drug and nicotine withdrawals. She also alleges the decisions caused
8 her to suffer further from her then-existing fractured spine, head trauma, headaches, and mental
9 illnesses, *e.g.* PTSD. Sexton alleges that she suffered from chronic, excruciating pain due to the
10 denial of effective pain medication as well as the withholding of her prescription glasses despite
11 Defendants knowing she was experiencing agonizing headaches. Sexton alleges that Defendants
12 chose to withhold her prescriptions and treatment based on a blanket policy, meaning Defendants
13 did not consider the particularities of the circumstances or needs for Sexton. See Colwell v.
14 Bannister, 763 F.3d 1060 (9th Cir. 2014) (holding that a blanket, categorical denial of medically
15 indicated treatment violated a prisoner's constitutional rights in the in the context of a claim for
16 deliberate indifference of a serious medical need). Thus, Sexton has adequately pleaded an
17 inadequate medical claim under the Fourteenth Amendment.

18 ***c. Las Vegas Defendants – Discussion***

19 Las Vegas Defendants also move to dismiss Claim Three, arguing that the “no-narcotic”
20 policy does not deprive Sexton of any constitutional right because inmates are not entitled to their
21 choice of medicine. Las Vegas Defendants also argue Sexton received some medical care.

22 The Court denies Las Vegas Defendants' motion to dismiss Claim Three based on the same
23 considerations given to Henderson Defendants' motion to dismiss above. Specifically, under
24 Colwell, the blanket policy of excluding certain pain medication or prescription glasses may be
25 unconstitutional if the policy results in requiring pretrial detainees to go without the proper medical
26 care. The Court therefore denies Las Vegas Defendants' motion as to Claim Three.

27 ***iv. Claim Four: Inadequate Medical Care***

28 Sexton asserts a second claim for inadequate medical care based on Defendants repeatedly

1 assigning her an upper bunk. Henderson Defendants argue the screening order allowed the claim
2 to proceed against them despite Sexton alleging the claim against only Las Vegas Defendants.
3 Sexton concedes she did not intend to assert the claim against Henderson Defendants. The Court
4 therefore dismisses Henderson Defendants from Claim Four. Las Vegas Defendants do not argue
5 for the dismissal of Claim Four. The claim will therefore proceed against Lombardo and LVMPD.

6 ***v. Claim Five: Housing Policy in Violation of Due Process***

7 In Claim Five, Sexton alleges that Las Vegas Defendants violated due process under the
8 Fourteenth Amendment based on a policy of housing critically-injured inmates alleging improper
9 treatment in a hard cell. Las Vegas Defendants argue the claim fails the plausibility standard of
10 FRCP 12(b)(6). But Defendants' argument ignores the history of this matter. Sexton originally
11 filed her claims in a related matter before the Court. White v. County of Clark Nevada, 2:16-cv-
12 00734-RFB-VCF (D. Nev. Filed April 1, 2016). Plaintiffs in both matters allege that they were
13 subjected to a policy or practice to house critically-injured detainees in hard cells. When the Court
14 takes judicial notice of her earlier filings and the related case before the Court, the claim
15 "contain[s] sufficient allegations of underlying facts to give fair notice and to enable the opposing
16 party to defend itself effectively." AE ex rel. Hernandez, 666 F.3d at 637 (quoting Starr v. Baca,
17 652 F.3d 1202, 1216 (9th Cir. 2011)). Thus, the Court denies Las Vegas Defendants' Motion to
18 Dismiss as it relates to Claim Five.

19 ***vi. Claim Six: Excessive Force***

20 Claim Six involves a claim for excessive force in violation of the Fourth Amendment
21 against Las Vegas Defendants.

22 ***a. Legal Standard***

23 The Fourth Amendment prohibits the use of excessive force in the context of an arrest.
24 Graham v. Connor, 490 U.S. 386, 388 (1989). A Fourth Amendment claim of excessive force is
25 analyzed an objective reasonableness standard set forth in Graham. Davis v. City of Las Vegas,
26 478 F.3d 1048, 1053–54 (9th Cir. 2007).

27 ***b. Discussion***

28 Sexton asserts Claim Six against Las Vegas Defendants, alleging Yannis used excessive

1 force when he slammed her into the ground and jumped on top of her despite her complete
2 compliance during the arrest. She alleges Yannis acted in accordance with a policy allowing the
3 use of excessive force during arrests—a policy that was ratified by Lombardo and LVMPD.

4 Las Vegas Defendants move to dismiss the claim as it relates to Lombardo and LVMPD,
5 arguing that no objective facts have been alleged to support municipal liability. The Court agrees.
6 Unlike Sexton’s other claims based on alleged policy, the general allegation of excessive force
7 used in a single incident does not suffice to state a claim alleging a policy approving of excessive
8 force. Further, no complimentary claims of excessive force are pending in White v. County of
9 Clark Nevada, 2:16-cv-00734-RFB-VCF (D. Nev. Filed April 1, 2016). Thus, there are no
10 available allegations in White to support Sexton’s claim of a policy for excessive force in this
11 matter. The Court grants Las Vegas Defendants’ Motion to Dismiss as it relates to Claim Six. The
12 Claim will therefore proceed against Yannis only.

13 **vii. Claim Seven: ADA and RA**

14 In her final claim, Sexton alleges an ADA and RA violation against Las Vegas Defendants
15 and HPD. As discussed *supra*, the Court substitutes COHN for HPD.

16 **a. Legal Standard**

17 “There is no significant difference in analysis of the rights and obligations created by the
18 ADA and the RA.” Zurkle v. Regents of Univ. of California, 166 F.3d 1041, 1045, fn. 11 (9th Cir.
19 1999). Courts therefore “[apply] the same analysis to claims brought under both statutes[.]” Id.
20 Both the ADA and the RA prohibit discrimination against individuals with disabilities on the basis
21 of the disabilities. Uptake v. Multnomah Cty., 870 F.3d 939, 949 (9th Cir. 2017) (outlining the
22 elements for an ADA claim and an. RA claim). “A public entity may not disregard the plight and
23 distress of a disabled individual.” Id. at 951. “The failure to provide reasonable accommodation
24 can constitute discrimination” under the ADA and the RA.” Id. (internal quotations omitted).

25 **b. Discussion**

26 Las Vegas Defendants move to dismiss Claim Seven, arguing the ADA and the RA were
27 satisfied when Sexton received a medical evaluation and Ibuprofen. But the ADA and the RA may
28 require more. Although Defendants medically evaluated Sexton and provided Ibuprofen for her

1 pain, the ADA and the RA may be violated if the Las Vegas Defendants failed to accommodate
2 Sexton's alleged disabilities. Plaintiff has sufficiently alleged that the Defendants did not provide
3 her the treatment medically necessary for her specified and known medical disabilities. The Court
4 denies Las Vegas Defendants' motion to dismiss as to Claim Seven accordingly.

5
6 **C. CONCLUSION**

7 **IT IS ORDERED** that Plaintiff Amanda Lea Sexton's Motion to Add Assisting Inmate to
8 Transaction List (ECF No. 46) is **DENIED**.

9 **IT IS FURTHER ORDERED** that Plaintiff Amanda Lea Sexton's Motion for an Order
10 Allowing Correspondence Between Plaintiff and Toney White (ECF No. 47) is **DENIED**.

11 **IT IS FURTHER ORDERED** that Plaintiff Amanda Lea Sexton's Motion to Extend Time
12 to Defendants' Motion to Dismiss (ECF No. 70) is **GRANTED** *nunc pro tunc*.

13 **IT IS FURTHER ORDERED** that Henderson Defendants Chavez, Robinson, Adams,
14 Niswonger, and City of Henderson Police Department's Motion to Dismiss (ECF No. 62) is
15 **GRANTED in part** and **DENIED in part**.

16 **IT IS FURTHER ORDERED** that Las Vegas Defendants Lombardo, Cadet, Yannis, and
17 Las Vegas Metropolitan Police Department's Motion to Dismiss (ECF No. 64) is **GRANTED in**
18 **part** and **DENIED in part**.

19 The Court dismisses Henderson Police Department, substituting City of Henderson into
20 Claim Three and Claim Seven. As to Claim One, the Court dismisses the First Amendment inmate
21 mail claim but allows the First Amendment retaliation claim to proceed. The Court allows Claim
22 Two and Claim Three to proceed. The Court dismisses Defendants Adams and Niswonger from
23 Claim Four. The Court allows Claim Five to proceed. The Court dismisses Defendants Lombardo
24 and Las Vegas Metropolitan Police Department from Claim Six. The Court allows Claim Seven
25 to proceed.

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1 DATED: September 19, 2018.

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3 **RICHARD F. BOULWARE, II**
4 **UNITED STATES DISTRICT JUDGE**

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